The George Washington University
WASHINGTON DC

THE PRESIDENT

TO: Lilien F. Robinson

FROM: Stephen J. Trachtenberg

SUBJECT: 1998-99 Faculty Senate Resolutions

DATE: June 18, 1999

Lilien: I am in receipt of your April 16,1999 memorandum providing a tabulation of resolutions acted upon by the Faculty Senate during its 1998-99 session. As you requested, I am pleased to attach the response of the Administration to these resolutions for inclusion in the Faculty Senate Annual Report.

SJT/h
Attachment

2121 EYE STREET, N.W. • WASHINGTON, DC 20052 • (202) 994-6500 • FAX (202) 994-0654

Resolutions 1998-99 Session

Resolution No.	Date of Meeting	Title of Resolution	Action	Response of administration
98/ 1	5/8/98	A Resolution of Appreciation for Doris D. Trone	Adopted by acclamation 5/8/98	RECEIVED
98/2	9/11/98	A Resolution to Change the Description of the Z Symbol	Adopted, as amended 9/11/98	RECEIVED
98/3	9/11/98	A Resolution to Strengthen University Relations with its Retired Faculty (Substitute)	Adopted, as amended 9/11/98	RECEIVED
98/4	10/16/98	A Resolution to Endorse a Revised University Copyright Policy	Adopted, as amended 10/16/98	RECEIVED
98/5	12/11/98	A Resolution to Endorse Interim Policy and Procedures Governing Sexual Harassment Complaints, as Amended	Adopted, as amended 12/11/98	RECEIVED with the understanding that a final version will be completed this calendar year
98/6	12/11/98	A Resolution Opposing Making the Vice President for Academic Affairs' Notice of Denial of Tenure Final Action of the University (Although Subject to Appeal)	Tabled 12/11/98	TABLED

Resolutions 1998-99 Session

Resolution No.	Date of Meeting	Title of Resolution	Action	Response of administration
98/7 *	2/5/99	A Resolution on Tenure by Default (Substitute)	Adopted 2/5/99	Approved by Board of Trustees 2/12/99
98/8	3/12/99	A Resolution Encouraging the Faculty to Support and Participate in Charity Events	Adopted, as amended 3/12/99	RECEIVED

* Code amendment

A RESOLUTION OF APPRECIATION (98/1)

WHEREAS, Doris D. Trone has held the position of Faculty Senate Activities Coordinator for 25 years; and

WHEREAS, Doris D. Trone has earned the sincere respect and gratitude of the members of the Faculty Senate; NOW, THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

THAT the following citation be issued:

In recognition of her contributions, through her work in the Faculty Senate, to The George Washington University during 25 years of service to faculty and administration; and

In recognition of her organizational talents, conscientious maintenance of archival materials pertaining to the actions and procedures of the Faculty Senate, and her eagerness to share extensive and invaluable knowledge of the Senate's legislative and institutional history; and

In recognition of her practical assistance and wise counsel which she has provided since 1972 to 25 Faculty Senate Executive Committees and 8 Chairs of that Committee; and

Especially in recognition of her dedication to the effective operation of all aspects of the Faculty Senate's complex structure and the sincerity of her commitment to the achievement of the University's mission of successful shared governance;

THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY
CITES
DORIS D. TRONE
FOR
DISTINGUISHED SERVICE

Stephen Trachtenberg

Stephen Joel Trachtenberg, President

Lilien F. Robinson

Lilien F. Robinson, Chair
Executive Committee of
the Faculty Senate

May 8, 1998
Adopted by acclamation

A RESOLUTION TO CHANGE THE DESCRIPTION OF THE Z SYMBOL (98/2)

WHEREAS, the description of the Z grade/symbol on p. 277 of the *University Bulletin*, "The Z grade is assigned when students are registered for a course which they have not attended and in which they have done no substantial graded work" is contradictory and confusing; and

WHEREAS, on page 276 of the *University Bulletin* reference is made to "the symbol Z (Unauthorized Withdrawal)" and on page 278 to "a grade of Z," it is unclear whether or not the Z is a grade; and

WHEREAS, there is abundant evidence that this mark is being used incorrectly;

WHEREAS, the Joint Committee of Faculty and Students and the Committee on Educational Policy of the Faculty Senate have produced and approved a revised definition of the Z symbol and a policy to prevent abuses in its use; NOW, THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

1. That the description of the Z "grade" as given in the *University Bulletin* and in other bulletins of the various Schools, Colleges, and Divisions be changed to:

> The symbol of Z is assigned when students are registered for a course that they have not attended or have attended only briefly, and in which they have done no graded work, ~~or when the instructor has not assigned a grade~~. At the end of the academic year, students' records will be reviewed; if there is more than one Z per semester, the student's record will be encumbered until released by the student's advisor or academic dean. The symbol of Z is not a grade ~~substitute for any grade from A to F or an Incomplete~~ but an administrative notation.

Joint Committee of Faculty and Students and Educational Policy Committee
5/98

Adopted, as amended, September 11, 1998

[Substitute Resolution]*

A Resolution To [~~Enhance~~] Strengthen University Relations with its Retired Faculty (98/3)

Whereas, good policy suggests that the University should avail itself more fully of the experience, goodwill, and volunteerism of its retired faculty, defined as those former regular active status faculty who are eligible for retirement benefits); and

Whereas, the Senate Committee on Appointment, Salary, and Promotion Policies has reviewed the University's existing relations with its emeriti and sampled the relations of other universities with their emeriti; and

Whereas, forty-four members of the GW Society of the Emeriti, responding to a questionnaire, have proposed ways in which retired faculty might [~~"re-connect"~~] participate more fully [~~with~~] in the life of the University; and

Whereas, emeriti who are now on the Alumni mailing list express the wish that retired faculty be more fully informed of campus activities;

Therefore, Be it resolved by the Faculty Senate of the George Washington University: that it is the sense of the Faculty Senate

(1) that [~~the appropriate~~] University offices should mail to all retired faculty appropriate ~~such~~ University publications [~~as are available to active-status faculty~~];

(2) that all schools and departments should create mailing-lists of their respective retired faculty for the purpose of distributing to them such notices as invite their participation in appropriate social and scholarly activities;

(3) that schools and departments, whenever [~~possible~~] feasible, should afford shared office space and modest support services to those of their retired faculty who remain professionally active;

(4) that the Vice President for Academic Affairs should invite retired faculty to submit [~~modified Annual Reports detailing~~] news of their significant professional activities, with the understanding that the Office of University Relations [~~will~~] may publicize these activities in an appropriate venue;

(5) that the Committee on Ceremonies should consider the selection of outstanding retired faculty for recognition at the May Commencement ceremony; and

(6) that various offices of the University should encourage participation in the life of the University from those retired faculty who have volunteered their services.

* Deletions bracketed; additions underlined.

Committee on Appointment, Salary and Promotion Policies (including Fringe Benefits)
April 21, 1998
Adopted, as amended, September 11, 1998

with Policy

A RESOLUTION TO ENDORSE A REVISED UNIVERSITY COPYRIGHT POLICY (98/4)

WHEREAS, it is in the best interest of The George Washington University to have a policy on copyrights; and

WHEREAS, the current policy, adopted in 1990, is outdated; and

WHEREAS, the Advisory Council on Reseach, the Faculty Senate Committee on Research, and the Faculty Senate Ad Hoc Committee on Copyright Policy have reviewed and approved the attached revised policy; NOW, THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

(1) That the Senate endorses the attached Copyright Policy, as amended; and

(2) That the Senate recommends that, upon adoption by the University, this policy be incorporated by reference to the Faculty Handbook and that this policy be made available through the Office of Sponsored Research and the Medical Center's Office of Research; and

(3) That the Senate further recommends that, upon adoption by the University, this policy be posted on the University Web site, and noted in the appointment letters for all faculty (full-time, part-time, and adjunct).

Faculty Senate Research Committee
Faculty Senate Ad Hoc Committee on Copyright Policy
September 25, 1998

Adopted, as amended, October 16, 1998

THE GEORGE WASHINGTON UNIVERSITY

COPYRIGHT POLICY

Revised and Re-Adopted by
The George Washington University Board of Trustees
_____, 1998

INTRODUCTION

The University encourages the creation and publication of scholarly, technical, literary and artistic works as part of its educational mission. Generally, when the Faculty, Librarians or Students, in pursuit of their normal scholarly, professional, or academic responsibilities, including normal use of the University's physical facilities, by their own initiative create copyrightable works, the copyright and any resulting royalties may be claimed by the Faculty, Librarian, or Student as author of the copyrighted work. However, when a work qualifies as a "Work Made for Hire" or when "Substantial Use" of University resources is involved, as defined in the policy below, the copyright in such work shall be owned by or transferred to the University. When Staff or Students create copyrightable works within the scope of their employment duties at the University, the copyright will generally belong to the University. For Faculty and Librarians, the University only claims ownership of the copyright if the work qualifies as a Work Made for Hire, or if the work's creation required Substantial Use of University resources.

Description of Federal Copyright Law

Under federal copyright law, copyright protection subsists in "original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device." The copyright exists from the moment of creation of the work. The following categories of material, whether published or unpublished, may be subject to copyright protection: (a) literary works, such as books, journal articles, textbooks, laboratory manuals, lectures, or computer programs; (b) musical works, including any accompanying words; (c) dramatic works, including any accompanying music; (d) pantomimes and choreographic works; (e) motion pictures and other audiovisual works, such as films, video-tapes, videodiscs or multimedia works; (f) pictorial, graphic, and sculptural works; (g) sound recordings, such as audiotapes, audio cassettes, phonorecords or compact discs; and (h) architectural works.

Copyright protection does not cover the ideas or concepts embodied in a work, but rather the manner of expression. In general, as the law exists in 1998, for works created after 1978 the term of the copyright is the life of the author plus 50 years, or in certain circumstances, the shorter of 75 years from the year of the first publication or 100 years from the year of creation. Subject to certain limitations, the owner of a copyright has the exclusive right to do and to authorize the following: (a) to reproduce copies of the copyrighted work; (b) to make derivative works based on the copyrighted work; (c) to distribute copies of the copyrighted work; (d) to perform the copyrighted work publicly; and (e) to display the copyrighted work publicly.

COPYRIGHT POLICY OF THE GEORGE WASHINGTON UNIVERSITY

1. DEFINITIONS

1.1 "Faculty" means all those individuals listed in Part I, Section B of the Faculty Code.

1.2 "Librarians" means all those individuals receiving a letter of appointment from the Vice President for Academic Affairs or that individual's designee to a professional librarian position, with or without compensation from the University, and whether full-time, research, part-time, visiting, or other status.

1.3 "Staff" means all those individuals, in graded or ungraded positions, or on wage account status, whether full-time, part-time, or other status, receiving compensation from the University as employees, other than Faculty and Librarians.

1.4 "Students" means all individuals associated with the University in active student status as defined by formal registration, or on approved leave of absence status, whether full-time or part-time, whether or not holding a fellowship, a teaching assistantship, a research assistantship, or equivalent award, and whether or not receiving salary, wages, or a stipend.

1.5 The terms "Sponsored Research" and "Sponsored Project" shall refer to research activities or other work performed by Faculty, Librarians, Staff or Students under sponsorship from any agency, party or parties external to the University, pursuant to an agreement between such agency or party and the University, which research activity or other work may result in the creation of copyrightable works.

2. SCOPE AND ORDER OF PRECEDENCE

2.1 Scope.

This Policy applies to all Faculty, Librarians, Staff and Students of the University.

2.2 Order of Precedence.

In case any individual subject to this Policy has dual or multiple status in more than one defined category, any questions under this Policy shall be determined under the provisions applicable to the status of the individual with respect to the activity in question, if that status is clear. In case of joint or unclear activity, the order of precedence shall be to apply the provisions applicable to Faculty, Librarians, Students and Staff in that order, and in case of any remaining doubt, questions shall be resolved in a manner that gives greater rights to the individual. Any disputes under this section, as for other disputes under this Policy, shall be resolved in accordance with Section 6.4 of this Policy.

3. CATEGORY I: INDIVIDUAL WORKS, THE COPYRIGHT OF WHICH WILL NORMALLY BELONG TO THE FACULTY, LIBRARIANS, STAFF OR STUDENTS OF THE UNIVERSITY

3.1 Scholarly Works.

a. The University makes no claim of ownership of copyright in works of authorship created by members of the University community, unless such works qualify as "Works Made for Hire" or involve "Substantial Use" of University resources as defined below, or unless such works are created within the scope of a Sponsored Project under an agreement which provides for ownership of copyright by the University or a third party, in which case the Sponsored Project agreement shall take precedence. Sponsored Research, without a specific agreement for copyright, shall be considered scholarly work and the copyright in such works shall belong to the author (s), not to the

University.

b. The University strongly encourages Faculty and Librarians who assign their copyright rights in scholarly publications to outside publishers to retain the royalty-free rights of reproduction and instructional use for themselves and for the University. Upon request, University administrators and legal counsel will provide assistance relating to assignment agreements and such retention-of-rights clauses.

3.2 Textbooks and Instructional Materials.

The University makes no claim of ownership of copyright in textbooks or other published instructional materials, including computer assisted and multimedia materials, unless said materials have been made with Substantial Use of University resources or qualify as Works Made for Hire as defined below.

3.3 Theses and Dissertations.

Copyright ownership in a thesis or dissertation prepared by a Student toward degree requirements shall remain with the Student, provided that, unless otherwise agreed in writing, by submitting the work for credit or degree requirements, the Student shall automatically be deemed to have granted a non-exclusive, worldwide, royalty-free license to the University (i) to make available for viewing to the University community through electronic or other means the entire thesis or dissertation; (ii) to make available to the broader public a limited number of copies of such thesis or dissertation, for which the University will make reasonable efforts not to reproduce and distribute in excess of ten copies per year of each such thesis or dissertation; and, (iii) to make a summary or abstract available to the University community and the public by electronic means without limitation on quantity of access or copying.

4. CATEGORY II: SHARED RIGHTS

4.1 Policy Statement on Prior Approval.

Faculty and Librarians may make Substantial Use of University resources in creating copyrightable works within the scope of their job duties, with any usual or necessary approvals relating to the resource usage. Staff and Students, and Faculty and Librarians intending to work outside the scope of their University duties, shall not make Substantial Use of University resources to create copyrightable works without advance permission from, and an appropriate written agreement signed by, the relevant Vice President or designee. Failure to obtain such approval shall cause any copyrightable work created to be treated pursuant to Section 4.2.

4.2 Works Made with "Substantial Use" of University Resources.

Ownership of copyright in materials created by Faculty, Librarians, Staff or Students with "Substantial Use" of University resources shall be transferred by the author(s) to the University in accordance with Section 4.4, unless the University agrees, in writing, to waive or alter its rights. Notwithstanding the foregoing sentence, a transfer of copyright ownership by a faculty author to the University shall not be required under this Section 4.2 and Section 4.4 if a work has been created with "Substantial Use" of University resources in accordance with the request or direction of the University, unless the faculty author and the University have entered into a specific written agreement governing copyright ownership with respect to the work.

4.3 Definition of Substantial Use.

"Substantial Use" of University resources is that use of University laboratory, studio, audio, audiovisual, video, television, broadcast, computer, computational or other facilities, resources and Staff or Students which: (i) falls outside the scope of the Faculty member's or Librarian's normal job responsibilities or the Student's academic program or (ii) entails a Faculty member's or Librarian's use ~~uses~~ of such resources that are not ordinarily available to all or virtually all Faculty members with comparable status in the same School or Department or to all or virtually all similarly situated Librarians. The term "Substantial Use" does not include the use of personal office space, local telephone, library resources and personal computer equipment incidental to outside ~~consulting and other professional~~ activities that are permitted under Part II of the University's Policy on Conflicts of Interest.

4.4 Transfer of Rights to University.

Where a work subject to copyright is created with Substantial Use of University resources as provided above, unless otherwise agreed in writing, each Faculty member, Librarian, Staff and Student author of such work shall execute an irrevocable written transfer, assignment or license to the University, in a form approved by the University, which provides for the following, unless otherwise disclosed by the Faculty member, Librarian, Staff or Student and, where relevant, agreed to by the University:

a. that the author transfers all right, title and interest in and to the copyright to the University;

b. that the work is an original work created by the author, that there are no known joint authors (or that any joint authors are or have been identified in writing to the University), and that the rights in such work have not been transferred, licensed or assigned to any other entity;

c. that any preexisting materials, whether copyrighted or in the public domain, reflected in the subject work, are or have been identified in writing to the University;

d. that the author shall not distribute any copies of the work without the University's permission and that any copies of the work distributed by or with the authority of the author shall bear an appropriate copyright notice, and notice of the University's interest therein; and

e. that the author shall execute any further documents, and provide any additional information and cooperation necessary to obtain registration or deposit of the copyright, or to enforce the rights in the copyright.

4.5 Allocation of Royalties for Copyrights Transferred to the University.

Where ownership of a copyright is transferred to the University as provided in Section 4.4, unless otherwise agreed in writing, any income derived from publication, distribution, performance, display or sale of the work or derivative works, or licensing of any rights in the copyright, shall be allocated as follows:

(a) University costs associated with registration or deposit of the copyright, and any costs incurred by the University in connection with publication, distribution, performance, display or sale of copies of the work or licensing or enforcement of any rights in the work shall first be reimbursed;

(b) The remainder of any revenues after payment of the above costs shall be deemed "Net Income" and divided for the term of the copyright in the following manner:

Net Income Distribution

	Author	Author's Department	Author's School	Research Office*
First $100,000/yr	50%	20%	10%	20%
Above $100,000/yr	40%	20%	15%	25%

* Associate Vice President for Research and Graduate Studies (non medical) or Associate Vice President for Research (medical) -- to be used for the purpose of promoting scholarship in the University

5. CATEGORY III: WORKS MADE FOR HIRE, THE COPYRIGHT OF WHICH WILL NORMALLY BELONG TO THE UNIVERSITY

5.1 Ownership of Copyright in a "Work Made for Hire."
Copyright in a "Work Made for Hire" as defined below shall be owned by the University.

5.2 Definition of "Work Made for Hire."
A "Work Made for Hire" is:

(a) a work prepared by a Staff member or Student employed at the University within the scope of employment; or

(b) a specially-commissioned work created by a Faculty member or Librarian within the scope of employment, as set forth in a specific written agreement between the Faculty member or Librarian and the University.[1]

5.3 Consideration for Works Made for Hire.
Where a work subject to copyright is created as a "Work Made for Hire" as defined above,

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[1] *Although not strictly within the scope of this Policy, under federal law and University practice a "work made for hire" may also include a work created by any non-employed individual that is specially ordered or commissioned by the University, and subject to a written agreement that it is a work made for hire, that is: (i) part of a contribution to a collective work; (ii) part of a motion picture or other audiovisual work; (iii) a translation; (iv) a supplementary work (meaning a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes and indexes); (v) a compilation; (vi) an instructional text (meaning a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities); (vii) a test, or answer material for a test; or (viii) as an atlas. It is the University's policy and practice to require transfer of copyright rights from third parties to the University for all such specially-ordered or commissioned works.*

the normal salary or other remuneration paid to the Faculty member, Librarian, Staff member or Student shall ordinarily constitute full consideration for the creation of the copyrighted work, unless, for specially-commissioned works under section 5.2(b), additional consideration is agreed upon by an authorized University official in writing in advance.

6. COPYRIGHT ADMINISTRATION

6.1 Disclosure of Category II and Category III Copyrightable Materials.

Whenever any Student or Staff member intends to create a copyrightable work that is outside the scope of the academic program or employment of a Student or Staff member and that may involve Substantial Use of University resources, that person shall disclose such intent to the Associate Vice President for Research and Graduate Studies (non-medical) or to the Associate Vice President for Research for the Medical Center, or their designees, in the form and manner approved by the University, to obtain in advance a tentative decision of the relevant official on whether the work will be a Work Made for Hire or will involve Substantial Use of University resources. In addition, if at any time a Student, Staff member, Faculty member or Librarian creates a copyrightable work that is a Work Made for Hire or involves Substantial Use of University resources, and such work or use of University resources has not received advance approval from the appropriate official, or if the basis on which an advance approval was given has materially changed, the Student, Staff member, Faculty member or Librarian shall make a disclosure to and seek a decision from the appropriate official on whether creation of the work was a Work Made for Hire or involved Substantial Use of University resources. Failure to comply with this Section 6.1 may result in the forfeiture of the individual's rights under this policy. Such cases will be reviewed by the Associate Vice President for Research and Graduate Studies and additional sanctions consistent with other Faculty, Staff, Librarian or Student policies may be imposed in accordance with such policies.

6.2 Registration, Deposit, Disposition and Protection of Copyright.

Registration, deposit, disposition and protection of all copyrights owned by the University or in which the University has rights hereunder shall be accomplished in accordance with the University's directions, unless the University elects in writing to waive such rights with respect to any work and to transfer such rights to the author.

6.3 Copyright Administrator.

The Associate Vice President for Research and Graduate Studies shall be the Copyright Administrator for the University. The Copyright Administrator shall ensure that the University's Copyright Policy is enforced and will supervise the preparation of copyright registrations and deposits for Category II and Category III copyrightable works, maintain records, and provide advice to Faculty, Librarians, Staff and Students on copyrights and application of this policy.

6.4 Advisory Council.

The Advisory Council on Research (which will include faculty representatives designated by the Faculty Senate) will serve to assist the Copyright Administrator in the negotiation of copyright matters, the evaluation of ownership and the disposition of royalty income, primarily through its subcommittee, the Patent and Scholarly Works Review Panel. Disputes on copyright matters, including the interpretation of this Policy, shall be referred to the Patent and Scholarly Works

Review Panel for review and recommendation. The Associate Vice President for Research and Graduate Studies (nonmedical) or the Associate Vice President for Research for the Medical Center shall make a ruling on the dispute. Any appeal of a ruling by either official will be heard by the Vice President for Academic Affairs, who will then make the final ruling.

6.5 Periodic Review.

The University administration and the Faculty Senate shall review this policy at least once every four years and, following such review, shall jointly determine whether modifications to the policy are necessary or desirable to best serve the interests of the University and its Faculty and Librarians, Staff, and Students. Proposed amendments that result from such review and joint determination shall be presented by the Vice President for Academic Affairs to the Board of Trustees for final approval.

6.6 Reference to Official Titles.

Each reference in this Policy to the official title of a University official or body shall be deemed to include the successor to any such official or body.

Originally adopted by the Board of Trustees October 11, 1990
Revised _____, 1998

ADDITIONAL, PROPOSED CONFORMING CHANGES TO PATENT POLICY

1. Modify section VII.A on Scholarly Works, as follows:

All rights in scholarly books, articles and other publications, artistic creations, literary manuscripts, visual and auditory creations, and musical works, irrespective of their medium of storage or presentation, are granted to the faculty, librarians, staff and students who are the authors, except for "Works Made for Hire" and works made with "Substantial Use" of University resources (as such terms are defined in the University's Copyright Policy). The former items are meant to include computer programs, computer software, and databases that are accessory to or part of a scholarly text. Computer programs that are written for the primary purpose of educational learning and testing are excluded from classification as Inventions, Discoveries, Technologies, and Innovations. [See also The George Washington University Copyright Policy.]

2. Supplement definition in Section II of "Inventions", "Discoveries", "Technologies", and "Innovations" as follows:

"Inventions", "Discoveries", "Technologies", and "Innovations" are terms that are meant to cover tangible or intangible inventions, including any process, machine, manufacture, composition of matter, or improvement thereof, which is or may be patentable, whether or not reduced to practice. These terms are also meant to cover tangible research and development results whether or not patentable. Such results include, for example, computer programs, circuit designs of all types, data bases, technical and design drawings, biogenic materials, novel varieties of plants, chemically synthesized molecular systems, and other creations. Such tangible results may also be subject to the University Copyright Policy, and to the extent of any overlap, the intent is to treat such items first under the Patent Policy, and then if not patentable to treat them under the Copyright Policy.

3. Amend Section XIII as follows:

Disputes on patent matters, including the interpretation of this Policy on Patents and Scholarly Works, shall be referred to the Patent and Scholarly Works Review Panel for review and recommendation. Based on the Panel's recommendation, the Associate Vice President for Research and Graduate Studies (non medical) or the Associate Vice President for Research for the Medical Center shall make a ruling on the dispute. Any appeal of a ruling by either official will be heard by the Vice President for Academic Affairs, who will then make the final ruling.

4. Amend Section XV of the Patent Policy as follows:

The University administration and the Faculty Senate shall review this policy at least once every four years and, following such review, shall jointly determine whether modifications to the policy are necessary or desirable to best serve the interests of the University and its Faculty and Librarians, Staff, and Students. Proposed amendments that result from such review and joint determination shall be presented by The Vice President for Academic Affairs to the Board of Trustees for final approval.

5. Throughout, change Director of the Medical Center Office of Research to Associate Vice President for Research for the Medical Center.

A RESOLUTION TO ENDORSE INTERIM POLICY AND PROCEDURES GOVERNING SEXUAL HARASSMENT COMPLAINTS, AS AMENDED (98/5)

WHEREAS, Vice President for Academic Affairs Lehman, in a memo of Oct. 27, 1997, to the Chair of the Executive Committee, forwarded to the Faculty Senate "Policy and Procedures Governing Sexual Harassment" and announced his intention to implement these on an interim basis, while asking the Senate for review and consideration; and

WHEREAS, the Professional Ethics and Academic Freedom (PEAF) Committee, at the request of the Executive Committee, has over several months last term and this carefully studied the Interim Policy and Procedures, and has proposed a series of amendments to both the Policy and Procedures in the interests of clarification, simplification, and coherence; NOW THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

(1) That the Faculty Senate endorses the "Interim Policy and Procedures Governing Sexual Harassment Complaints", as amended, and recommends its promulgation to the University community; and

(2) That the Faculty Senate recommends that the said "Policy and Procedures Governing Sexual Harassment Complaints" continue to be designated as "interim" after its promulgation; ~~to allow completion of a more substantive review by the Faculty Senate of its overall approach to sexual harassment complaints~~ and that said "Policy and Procedures" be referred to an ad hoc committee, jointly appointed by the Vice President for Academic Affairs and the Chair of the Executive Committee of the Faculty Senate, and including the Assistant Vice President for Faculty Personnel and the Associate Vice President for Student and Academic Support Services, and other members of the University community with expertise on pertinent legislation, litigation, and policy related to sexual harassment; and that the Committee should also include broad representation from all sectors of the university's academic community and it should engage in wide-ranging consultation; and that its review should include the sexual harassment policies of other universities, as well as the literature on sexual harassment in the University setting; and that a majority of the members of the ad hoc committee shall be faculty members, and the ad hoc committee shall report its recommendations with respect to any changes to said "Policy and Procedures" to the Faculty Senate.

Committee on Professional Ethics and Academic Freedom
November 18, 1998

Adopted, as amended, December 11, 1998

INTERIM POLICY AND PROCEDURES GOVERNING SEXUAL HARASSMENT COMPLAINTS

Introduction

The George Washington University reaffirms its commitment to maintaining a positive climate for study and work in which individuals are judged solely on relevant factors, such as ability and performance, and are free to pursue their academic and work activities in an atmosphere that is free from coercion and intimidation. Sexual harassment is inimical to such an atmosphere and will not be tolerated.

Sexual Harassment Policy and Procedures

1. The University has adopted a definition of sexual harassment that will be applied in determining whether or not particular conduct constitutes sexual harassment. This definition parallels Section 1604.11 of the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex. Sexual harassment is defined as:

> **Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made explicitly or implicitly a term or condition of academic evaluation, advancement, or employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for decisions relating to evaluation of the academic performance or employment of the individual, (3) such conduct has the purpose or effect of substantially interfering with an individual's academic work performance or limiting participation in University programs, or (4) the intent or effect of such conduct is to create an intimidating, hostile, or offensive academic or work environment to a reasonable person.**

This policy acknowledges that conduct that has the effect of sexual harassment may occur without regard to the gender of either party.

In accordance with the statement on academic freedom as outlined in the Faculty Code, course content, discussion(unless such discussion involves unwelcome verbal conduct of a sexual nature that is persistent, pervasive, severe, and not germane to course content),

emphasis, textbooks and other assigned materials are specifically exempted from coverage. The sexual harassment policy refers to personal conduct.

Violation of this policy may lead to disciplinary action up to and including expulsion or termination.

2. Relationships that might be appropriate in other circumstances may be inappropriate when one of those involved must exercise professional judgement and responsibility over the other. This constraint applies to faculty members, employees, graduate students, and any other members of the University community in supervisory or evaluative roles.

Individuals in supervisory or evaluative roles should be aware that any personal relationship explicitly or implicitly of a sexual nature with their subordinates, even when both parties have consented to it, risks possible formal action against them by the other participant or by a third party. It is the administrator, instructor, or other individual responsible for the evaluation of the work product of the other participant in the relationship who, by virtue of that special responsibility, will be held accountable.

3. Retaliation against a person who complains of sexual harassment is prohibited. Allegations of retaliation, by the person accused of sexual harassment or by any other person, will be investigated and may result in disciplinary action.

4. A person making capricious or frivolous allegations of sexual harassment may be subject to disciplinary action.

5. A member of the University community who believes that behavior of a sexual nature in the academic or work environment may be inappropriate may initiate a confidential consultation by contacting the Office of the Vice President and General Counsel (994-6503). That Office will assign a Coordinator and arrange a consultation. Consistent with the procedures set forth in Appendix A, Section A, Confidential Consultation, the Coordinator will make sure that the individual has a copy of the sexual harassment policies and procedures, respond to any questions about them, and assist the individual in developing strategies to deal with the situation.

6. If the individual or the University wishes to file an informal complaint, the procedure set forth in Appendix A, Section B, Informal Complaint, will be followed.

7. If the allegations of sexual harassment are not satisfactorily resolved through the informal complaint process, a formal complaint may be filed. A formal complaint may be initiated by the person making the allegations or the person against whom the allegations have been made, or by the University. The procedures for the formal complaint process are set forth in Appendix B, Formal Complaint Process-Sexual Harassment.

8. If the informal complaint process or the formal complaint process results in a determination that sexual harassment has occurred, the findings and recommendations shall be referred to the appropriate University official for imposition of corrective action or sanctions. Possible sanctions may include, but are not limited to, oral warning, suspension, expulsion, or termination of employment subject to the provisions of law, of applicable University policies, and of the Faculty Code.

9. These procedures are intended to encourage resolution of a complaint of sexual harassment at the earliest possible stage. At the same time, where such resolution is not possible, these procedures provide for a more formal review of the situation by individuals not party to the case, and a final decision based upon that review. In providing these procedures, it is the intention of the University to carry them out in an equitable and timely manner. However, in extenuating circumstances, it may not be possible to adhere to established time frames, and extension of time shall not be construed as failure to follow established procedures.

10. All questions regarding interpretation of this policy, the procedures for the informal complaint process, or the procedures for formal complaints shall be resolved by the Office of the Vice President and General Counsel. The interpretation of the Office of the Vice President and General Counsel shall be subject to the provisions of law, applicable University policies, and of the Faculty Code.

Appendix A

INFORMAL COMPLAINT PROCESS - SEXUAL HARASSMENT

A. CONFIDENTIAL CONSULTATION

1. A member of the University community who is uncomfortable with a situation or behavior of a sexual nature which may be inappropriate (even though the person is not sure whether the conduct constitutes sexual harassment) may initiate a confidential consultation to discuss the matter. The individual should contact the Office of the Vice President and General Counsel (994-6503). The Office will assign a Coordinator and arrange an appointment for the consultation.

2. The confidential consultation consists of one or more meetings between the Coordinator and the individual requesting the consultation. The Coordinator will make sure that the individual has received a copy of the policies and procedures governing sexual harassment complaints and will respond to any questions about the policies and procedures.

3. Unless the University or the individual requesting the consultation decides to pursue an informal complaint, the consultation and the identity of the individual will remain confidential, to the extent practicable, and no other parties or University officials will be informed. A record of the consultation prepared by the Coordinator will be maintained by the Office of the Vice President and General Counsel, kept confidential to the extent practicable.

4. The Coordinator will take action based on the consultation, including, but not limited to, clarifying and resolving the matter with the individual, pursuing an investigation and continuing the informal complaint process, recommending counseling or other assistance or alternative action, or determining that no action is necessary.

5. When the Coordinator has reason to conclude that criminal conduct may have occurred or that it is necessary to protect the health or safety of any individual, the University may refer the matter to the appropriate authorities. A determination will be made by the Office of the Vice President and General Counsel.

6. While there are no specific time limits for requesting a confidential consultation or pursuing an informal complaint, persons who believe that they have been or are being subjected to sexual harassment are encouraged to seek assistance from the University through these procedures as soon as possible.

B. INFORMAL COMPLAINT

1. If the University or the person requesting the confidential consultation decides to pursue an informal complaint, the Coordinator will conduct an investigation.

2. The Coordinator will request that the person alleging harassment (the "Complainant") provide an account of the facts and circumstances of the alleged harassment. The Coordinator may request a signed statement from the Complainant and may assist the Complainant with the preparation of the signed statement. The Coordinator will then conduct an investigation of the complaint, including notice to the respondent.

3. If the Complainant declines to prepare a written statement, the Coordinator will prepare a written summary of the complaint based on the confidential consultation and conduct an investigation of the allegations.

4. Upon initiating an investigation, the Coordinator may inform the appropriate University officials who would be charged with recommending or implementing any corrective or disciplinary action of the informal complaint and that an investigation of the allegations is being conducted.

5. The process and scope of the investigation are at the discretion of the Coordinator.

6. Absolute confidentiality is rarely possible. However, the Coordinator will maintain confidentiality to the extent practicable and will advise the parties and all persons interviewed during the investigation (or notified of the investigation) of the need for discretion and confidentiality. Disregard for confidentiality may subject an individual to disciplinary action.

7. Upon concluding the investigation, the Coordinator will inform the Complainant and the person accused of harassment (the "Respondent") of his or her findings and any recommendations for resolving the matter between the parties or recommendations that will be made to the appropriate University officials for further action.

8. The investigation of an informal complaint and the preparation of findings and recommendations by the Coordinator shall be completed as soon as reasonably possible given the circumstances.

9. The Coordinator will inform the University officials initially notified of the investigation (see § B.4) of the Coordinator's findings and any recommendations for corrective or disciplinary action. Any corrective or disciplinary action taken must be consistent with the provisions of law, applicable University policies, and of the Faculty Code and be within the authority of the responsible University officials.

10. The responsible University Official shall provide the parties with a notice of corrective or disciplinary action taken, if any, along with a copy of the Coordinator's findings and recommendations, if any.

Appendix B

FORMAL COMPLAINT PROCESS - SEXUAL HARASSMENT

A. INITIATION OF THE FORMAL COMPLAINT PROCESS

1. If either party to the informal complaint process is dissatisfied with the outcome of the informal complaint, he or she may file a formal complaint.

2. A formal complaint must be filed within fifteen (15) business days after the receipt of notification from the responsible University official of the findings and recommendations resulting from the informal complaint process and of any corrective or disciplinary action taken based on the informal complaint process.

3. To initiate a formal complaint, the party must submit to the Coordinator a signed, written request to proceed with a formal complaint. The Coordinator will inform the requesting party of the specific complaint process that will be followed and provide a copy of the applicable procedures.

B. ESTABLISHMENT OF PANELS

1. Complaints will be heard by a five-member panel selected by the Associate Vice President for Human Resources (or the designee of the Associate Vice President) as described in Section D from a pool of eighteen (18) panelists who will be appointed as follows:

(a) Six (6) panelists will be appointed from the student body by the Vice President for Student and Academic Support Services;

(b) Six (6) panelists will be appointed from among the members of the Faculty Senate Dispute Resolution Committee by the Chair of the Dispute Resolution Committee after consultation with the Vice President for Academic Affairs; and

(c) Six (6) panelists will be appointed from the staff by the Vice President for Administrative and Information Services.

2. Each panelist will serve for a term of two (2) years. The appointing official should stagger the terms of appointment so that the terms of only three (3) of his or her appointees to the pool expire each year.

3. A panelist may be removed from the pool and replaced by another person at any time in the discretion of the appointing official. Vacancies in the pool of panelists should be promptly filled by the responsible appointing official.

4. Mandatory training will be provided for all appointees to the Formal Complaint pool at the time of appointment and, as needed, on an ongoing basis. Training will be conducted by the Assistant Vice President for Administrative and Information Services, the Dean of Students, and the Director of the Office of Equal Employment Activities, or their designees. Training shall include orientation in the roles and responsibilities of panel members, the complaint procedures, applicable policies, and other techniques and standards applicable to the complaint and hearing process.

C. INITIATION OF FORMAL COMPLAINT PANEL PROCEDURES

1. The written request to proceed with a formal complaint filed with the Coordinator shall include the following:

(a) A request for a formal hearing;

(b) A statement explaining the reasons why the findings or recommendations of the Coordinator should be modified or overturned; and

(c) A statement of the relief requested.

D. SELECTION OF THE FORMAL COMPLAINT PANEL

1 . When a formal complaint requiring a Formal Complaint Panel is received by the Coordinator, he or she shall forward the complaint to the Associate Vice President for Human Resources (or designee) who shall appoint the five-member panel on a rotating basis, as follows:

(a) Two (2) panelists from the status group of the Complainant (faculty, student, or staff member);

(b) Two (2) panelists from the status group of the Respondent (staff or faculty member); and

(c) One (1) panelist from the remaining status group.

2. The goal of the Formal Complaint Panel process is to complete the formal complaint procedures within forty-five (45) business days of the receipt of the formal complaint request by the Coordinator. Therefore, the members of each Formal Complaint Panel should be designated and the Coordinator notified of their selection within five (5) business days.

3. As soon as the members of the Formal Complaint Panel have been designated, the Coordinator will notify both parties of the names of the panelists. Any party to the dispute may disqualify one member of the Formal Complaint Panel by peremptory challenge. Any party may also seek to disqualify any member of the Formal Complaint Panel for cause. Within three (3) days of the receipt of the notice, a party shall submit any challenge(s) in writing to the Associate Vice_President for Human Resources. The Associate Vice President may, in his or her discretion, replace a challenged panelist with another member of the pool from the same status group.

4. A designated panelist who has a conflict of interest or is otherwise unable to serve on a Formal Complaint Panel shall recuse himself or herself by notifying the Associate Vice President.

E. FORMAL COMPLAINT PANEL ORGANIZATION

1. Within five (5) business days after the appointment of the Formal Complaint Panel, the panel members shall select a chairperson and review the request for a hearing.

2. The Formal Complaint Panel may request clarification or additional information from the Coordinator or from the parties. There shall be no ex parte communication between the members of the panel and either of the parties.

F. FORMAL COMPLAINT PANEL PROCEDURES - SUMMARY DECISION

1. The Formal Complaint Panel may issue a summary decision denying the request for a hearing and affirming the informal complaint process if the Formal Complaint Panel determines that the reasons presented for overturning or modifying the findings or recommendations of the Coordinator are without significant merit.

2. If the Formal Complaint Panel denies the request for a hearing, its decision will be in writing and include statements of reasons for denial of the request for a hearing. Copies of the Formal Complaint Panel's decision will be provided to the party who requested the hearing, the Coordinator, the official responsible for implementing corrective or disciplinary action, and the Associate Vice President for Human Resources.

3. Within fifteen (15) business days after receiving the summary decision of the Special Panel, either party may appeal the decision to the Associate Vice President for Human Resources. The appeal shall be in writing and shall set forth the reasons why the summary decision of the Formal Complaint Panel should be overturned.

4. The Associate Vice President for Human Resources shall review the record including the request for hearing, the summary decision of the Formal Complaint Panel, and the written appeal. If the Associate Vice President determines that the Formal Complaint Panel followed the guidelines for summary denial of the request for a hearing, he or she shall affirm the decision of the Formal Complaint Panel.

5. If the Associate Vice President determines that the summary decision of the Formal Complaint Panel was not made in accordance with the guidelines, he or she will appoint a new Formal Complaint Panel from the remaining members of the Formal Complaint Panel pool. The new Panel may issue a summary decision or proceed with the hearing process.

G. FORMAL COMPLAINT PANEL PROCEDURES - SCHEDULING A HEARING

1 . If the Formal Complaint Panel grants the request for a hearing, it will set the date and time for the hearing. If a new Formal Complaint Panel is appointed to conduct a hearing after a summary decision is overturned, the panelists will meet within a reasonable period of time, normally five (5) business days after their appointment, to select a chairperson and to set the date and time for a hearing. The hearing should be scheduled within a reasonable period of time, normally twenty (20) business days, after the Formal Complaint Panel is appointed.

2. The chairperson of the Formal Complaint Panel shall notify the parties of the date, time, and location of the hearing at least seven (7) business days prior to the hearing. Within seventy-two (72) hours after receiving notice of the hearing, a party with a scheduling conflict may submit a request to the chairperson for a postponement. The chairperson, after consulting the members of the Formal Complaint Panel, shall have the discretion to reschedule the hearing. All parties will be notified as soon as possible if the hearing is rescheduled.

3. If one or more of the parties does not appear for the hearing within sixty (60) minutes after the scheduled time, the Formal Complaint Panel shall decide whether to reschedule the hearing or to proceed.

H. FORMAL COMPLAINT PANEL PROCEDURES - CONDUCT OF HEARINGS

1. The chairperson of the Formal Complaint Panel shall preside over the hearing and make decisions on procedural issues. The hearing will be conducted in the following order:

(a) Preliminary Matters - the chairperson will introduce the parties and their counsel or advisors and the members of the Formal Complaint Panel; will review the order of proceedings and explain procedures governing the use of the tape recorder, and present a brief summary of the complaint.

(b) Opening Statements - the party requesting the hearing may make an opening statement. The responding party may then make an opening statement. Opening statements are limited to thirty(30) minutes in length.

(c) Presentation of the Complaint - the party requesting the hearing may present testimony, provide documents or other evidence to the Panel, and present witnesses. Following the testimony of the party and each witness, the other party will be permitted to ask questions.

(d) Response to the Complaint - the party responding to the complaint may present testimony, provide documents or other evidence to the Panel, and present witnesses. Following the testimony of the party and each witness, the other party will be permitted to ask questions.

(e) Closing Statements - the party requesting the hearing may make a closing statement. The responding party may then make a closing statement. Closing statements are limited to thirty(30) minutes in length.

2. Members of the Formal Complaint Panel may ask questions of the parties or witnesses at any time during the hearing.

3. The hearing will not be conducted according to strict rules of evidence; however, the chairperson of the Formal Complaint Panel may limit or exclude irrelevant or repetitive testimony.

4. When the hearing is lengthy or when it cannot be completed in one session for any other reason, the chairperson of the Special Panel may continue the hearing to a date and time acceptable to the parties and the members of the Special Panel.

5. Each hearing will be electronically recorded on audiotape. A copy of the recording may be obtained by either party from the Coordinator at a reasonable cost upon written request.

6. The hearings shall be open to the public unless, on the motion of a party or the Formal Complaint Panel, the Panel shall determine that it is in the best interest of the University and the parties that the hearing be closed.

I. FORMAL COMPLAINT PANEL PROCEDURES - WITNESSES

1. Each party may request witnesses to present testimony at the hearing and the Panel may require the complainant to testify.

2. At least five(5) business days before the hearing, each party shall provide the Coordinator and the other party with a list of witnesses he or she intends to present at the hearing.

3. The Formal Complaint Panel may request the appearance of additional witnesses. The Coordinator will arrange for the appearance of these witnesses.

4. Each party is responsible for notifying their witnesses of the date, time, and place of the hearing. A hearing will not automatically be postponed because a witness fails to appear.

5. All witnesses will be excluded from the hearing both before and after their testimony. A witness may be recalled at the discretion of the Formal Complaint Panel chairperson.

6. A University employee must notify his or her supervisor of the need to be absent from work to appear at a hearing. Employees will be paid while appearing at a hearing during working hours, but will not be paid for any other time spent on the complaint during or outside of working hours.

7. Supervisors and professors should be aware of the importance of hearings and not unreasonably withhold permission for appearance at a hearing. If an employee or student needs assistance in obtaining permission to appear at a hearing, he or she should contact the Coordinator.

J. FORMAL COMPLAINT PANEL PROCEDURES - ADVISORS

1. Each party may be accompanied by an advisor. The advisor may be an employee of the University, an attorney, or any other person selected by the party.

2. If either the Complainant or the Respondent plans to be accompanied by an attorney or other advisor at the hearing, the

Coordinator and the other party must be notified at least five (5) business days prior to the hearing.

3. The Formal Complaint Panel may request that a University furnished attorney or other advisor be present at any hearing to provide advice to the Formal Complaint Panel.

4. The University may have an observer present at any hearing.

K. DECISION OF THE FORMAL COMPLAINT PANEL

1. After the hearing, the Formal Complaint Panel will meet in a closed session to review the hearing and make a decision on the complaint. The decision must be approved by a majority of the members of the Formal Complaint Panel.

2. The decision of the Formal Complaint Panel shall be in writing and set forth the panel's findings of fact and conclusions.

3. The written decision of the Formal Complaint Panel shall be submitted to the Associate Vice President for Human Resources within thirty(30) calendar days after the conclusion of the hearing. The Associate Vice President will send a copy of the decision to both parties at their home addresses of record by courier, overnight mail, or certified mail (return receipt requested).

4. If it is the decision of the Formal Complaint Panel that sexual harassment did occur, the Associate Vice President for Human Resources shall forward a copy of the written decision to the University official responsible for recommending or implementing corrective or disciplinary action.

L. APPEAL OF THE DECISION OF THE FORMAL COMPLAINT PANEL

1. A party who is dissatisfied with the decision of the Formal Complaint Panel may file an appeal with the Vice President for Academic Affairs. The appeal must be in writing and set forth the reasons why the decision of the Formal Complaint Panel should be modified or overturned. The appeal must be based on the hearing record and may not present new evidence or testimony.

2. An appeal must be filed within fifteen (15) business days of the receipt of the decision of the Formal Complaint Panel. If an appeal is not received by the deadline, the decision of the Formal Complaint Panel will be the final University decision on the complaint.

3. Efforts will be made by the Vice President to issue a final decision on the appeal within twenty (20) business days. The decision of the Vice President shall be the final University decision on the complaint.

4. When the decision of the Formal Complaint Panel is final, or when the final decision on appeal is issued, the Coordinator will provide a copy of the final decision to the University official(s) responsible for implementing corrective or disciplinary action. Any corrective or disciplinary action taken by the responsible University official shall be subject to the provisions of law, of applicable University policies, and of the Faculty Code, and be within the authority of the responsible University official.

A RESOLUTION OPPOSING MAKING THE VICE PRESIDENT FOR ACADEMIC AFFAIRS' NOTICE OF DENIAL OF TENURE FINAL ACTION OF THE UNIVERSITY (ALTHOUGH SUBJECT TO APPEAL) (98/6)

WHEREAS, the Faculty Code (pp. 19-20) provides that tenure decisions "shall normally follow faculty recommendations. Departures from this standard shall be limited to those cases involving compelling reasons," and

WHEREAS, the Faculty Code (p.6) provides that a faculty member in the penultimate year of pre-tenure service is entitled to at least a year's notice if tenure will not be granted, and if such notice is delayed, tenure will be granted by default of such notice; and

WHEREAS, in response to a request of the Administration and in the light of cases in which administrative delay had arguably resulted in a right to tenure by default, the Senate passed Resolution 97/8, substituting a one-year extension of a contract for tenure by default in cases in which delay by the University resulted in less than a one year's notice of a denial of tenure; and

WHEREAS, the Administration now proposes to totally eliminate the possibility of tenure by default, and thus to permit denial of tenure by simple inaction, without having to show compelling reasons; and

WHEREAS, the Administration has asserted its view that the Dean of the school and subsequently, the Vice President for Academic Affairs have the authority to make decisions as to whether tenure is granted that are "independent of the department and dean's recommendations," thus disregarding the primacy of the role of the faculty in personnel matters and the limited power of the Administration to nonconcur for compelling reasons; and

WHEREAS, the Administration now also proposes that the present role of the Board of Trustees (or at the election of the department, the President) as the final decision-makers in tenure awards be replaced by the Vice President for Academic Affairs, with appeal following "final decision" by the Vice President for Academic Affairs to the President or Board; and

WHEREAS, these would represent major constitutional changes in University governance, weakening the academic personnel roles of both the faculty and the Board of Trustees; and

WHEREAS, the result would be to encourage faculty recommended for tenure by their peers and thus presumptively entitled to tenure to resort to filing lawsuits in the courts prior to

completion of University action on nonconcurrences, or alternatively,. would deny them the full year presently provided for their seeking employment elsewhere; and

WHEREAS, it is in the interest of both the University and the faculty to attempt to minimize the soaring costs of resolving tenure issues by litigation in courts, NOW THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

That the Faculty Senate strongly opposes amendment of the Faculty Code to substitute the decision of the Vice President for Academic Affairs for that of the Board of Trustees (or the President), even subject to appeal, in nonconcurrence cases; and

The Faculty Senate also expresses its disagreement with the Administration's claim to have independent decisional authority in personnel matters, thus eroding the primacy of the present faculty role.

[Approved by the Senate Committee on Professional Ethics and Academic Freedom 10/16/98.]

Tabled, December 11, 1998

EXPLANATORY STATEMENT ON THE RESOLUTION OPPOSING FURTHER CHANGES IN THE TENURE PROVISIONS OF THE FACULTY CODE

1. The Faculty Code provides that tenure decisions "shall normally follow faculty recommendations. Depafrtures from this standard shall be limited to those cases involving compelling reasons."

2. This is not unique to GW. The Joint Statement on Governance of Colleges and Universities was endorsed by both the *Association of Governing Boards of Colleges and Universities* and the AAUP over 30 years ago. It provides:

> Faculty status is primarily a faculty responsibility; this area includes appointments reappointments...the granting of tenure, and dismissal. The primary responsibility of the faculty for such matters is based upon the fact that its judgment is central to general educational policy. Furthermore, scholars in a particular field or activity have the chief competence for judging the workof their colleagues...Determinations in these matters should first be by faculty action through established procedures, reviewed by the chief academic officers with the concurrence of the board. *The governing board and president shouid, on questions of faculty status, as in other matters where the faculty has primary responsibility, concur with the faculty judgment except in rare instances and for compelling reasons which should be stated in detail.* [Emphasis supplied.]

3. In cases in which tenure is not granted, the Faculty Code provides that the faculty member is entitiled to at least a year's notice, in order that he or she may attempt to find other employment. This is also not unique to GW, it is provided for in a 1940 Statement endorsed by the Association of American Colleges and the AAUP.

4. To enforce these provisions, the Faculty Code currently provides that if final notification that tenure is not going to be granted is not given at least a year before employment will terminate, tenure will be given automatically.

5. Because this has happened in two individual cases in recent years, the Administration and the faculty agreed to draft language that would substitute a one-years extension of a contract if this occurred in the future, rather than tenure by default. Tenure by default would occur only if there was inaction by the Administration for an additional year. This is necessary to prevent a pocket veto by inaction from replacing the present requirement for compelling reasons for nonconcurrence. This compromise was drafted initially by University counsel,[1] approved by the

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[1]The position of the Administration is confusing. Last year's resolution was initially drafted by Debra Fields of the University Counsel's office. In modified form it was approved by the PEAF Committee and by the Senate, with the assent of the President. This year, additional language was suggested by the Administration to reflect the Academic Vice President's view that his decision in personnel matters be final, though subject to the possibility of appeal. A third position was taken on October 16, when Deputy General Counsel presented toward the end of a PEAF meeting (and after the subcommittee assigned to the issue had already met and voted).

Senate PEAF committee (and by President Trachtenberg orally at a Senate meeting, and passed by the Senate last year. It has been conceeded by the Vice President for Academic Affairs that even without this change, current computer-assisted tracking of such cases makes the possibility of tenure by default remote. The suggested change is still before the Board, awaiting its action.

6. There is also the question of the role of the Board in cases in which the Administration does not concur with faculty recommendations in personnel matters. Consistently with the documents quoted previously that have been approved by colleges and universities alll over the country, the Board is the final decision-maker, following review of the case by the Executive Committee of the Faculty Senate. When it was proposed that this be changed in 1993, a compromise was worked out allowing a department that had made a tenure recommendation that had not been concurred in by the Administration to elect to have the President rather than the Board make the final decision. This was written into the Faculty Code by approval by the Board.

7. The Vice President for Academic Affairs has now proposed that all of these understandings and compromises be revisited and that he be viewed as the final decision-maker in personnel matters and that his decision be "independent of department recommendations." Appeal to the President would be allowed, but his decision, not the faculty , would presumably be controlling as a practical matter.

8. One result would be to deny a person being excluded from the faculty the year to find alternative employment following final decision by the University.

8. A second result would be to channel personnel disputes away from the internal resolution procedures of the University and into the courts, something that should not be sought by either the University nor the faculty.

9. A third result would be the movement of faculty personnel determinations from one of primary, but not total faculty responsibility, to one following a command-from-above model.

10. The PEAF committee has approved and forwarded to the Senate the attached resolution opposing these changes.

11. The Faculty Code is our Constitution. It is part of the contract of every member of the faculty with the University. It has served both the faculty and the University well over many, many years. It should not lightly be changed.

This proposal included suggestions for even more extensive revisions of the Faculty Code. A fourth proposal was made by General Counsel to the Chair of the Executive Committee prior to the October 22 meeting of the Academic Affairs Committee of the Board of Trustees. The most recent Administration proposals would authorize vetos of faculty recommendations by simple inaction. President Trachtenberg has stated that he does not want this. His statement is consistent with his position last year, when the faculty approved its earlier resolution.

SUBSTITUTE

A RESOLUTION ON TENURE BY DEFAULT (98/7)

WHEREAS, the Faculty Code provides, in IV A.3.1.c), that a regular active-status faculty member who is tenure-eligible and who is not notified in writing by June 30 preceding the final year of his or her maximum term of appointment that he or she will not be granted tenure, shall acquire tenure at the end of the term; and

WHEREAS, Resolution 97/8 (copy attached) provided that: (i) if a decision on tenure was not made by June 30 of the penultimate year of the maximum term of appointment for a tenure-track faculty member, his or her term of appointment would automatically be extended for an additional year, with a decision on tenure required by June 30 of the final year of the nonextended term, and (ii) if a tenure decision was not made by the latter date, the faculty member would automatically acquire tenure; and

WHEREAS, the University administration has requested that the Faculty Senate reconsider and amend Resolution 97/8 by adding a provision that would permit a limited extension for resolving an administrative nonconcurrence with a faculty recommendation before the automatic extension of the term of appointment of the affected faculty member would take effect; and

WHEREAS, the Faculty Senate is willing to make the limited amendment requested by the University Administration but otherwise desires to re-adopt the provisions of Resolution 97/8 and to reaffirm the important principles of faculty governance and academic freedom set forth therein and in the accompanying explanatory statement dated December 18, 1997 (copy attached);

NOW, THEREFORE, BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

That, in fulfillment of the purposes and principles embodied in Resolution 97/8, the Faculty Code be amended in the following respects:

"(1) Article IV, Section A.3.1.c) shall be amended to read as follows (underlined matter added, lined-out matter deleted):

A faculty member of the rank of assistant professor or higher who will not be granted tenure at the end of the final year of his or her maximum term of appointment shall be so notified in writing no later than June 30 preceding the year in which his or her appointment will expire [in accordance with Article V, Section B, hereof].* ~~Any such faculty member who is not notified shall acquire tenure at the end of the term.~~ However, NOTWITHSTANDING ANY OTHER PROVISIONS OF ARTICLES IV AND V OF THE FACULTY CODE, ~~+~~if a decision on tenure has not become final by such June 30 deadline due to a failure to resolve an administrative nonconcurrence with a faculty recommendation, the June 30 deadline may be extended for up to 60 days, provided the appropriate administrative officer has given written notice of such extension to the faculty member no later than the original June 30 deadline. A faculty member who does not receive notice of denial of tenure by the date required under the preceding two sentences shall not be granted tenure at the end of his or her pending term of appointment, but instead shall be granted a one-year extension of such term. If not notified by June 30 of the final year of the non-extended term of appointment that tenure will not be granted, he or she will acquire tenure at the end of the extended term."

"(2) Article V, Section B.3., shall be amended to read as follows:

Dismissal of a faculty member during a non-tenured appointment, or the nonrenewal of SUCH‡an appointment with less than the required advance notice, shall be preceded by a statement of reasons, and shall be subject to the provisions of Article X of this Code. [Notwithstanding the foregoing sentence, notice of termination of the appointment of a faculty member who will not be granted tenure shall be given in accordance with Article IV. Section A.3.1.c) of this Code, and no delay in giving such notice shall be permitted except as expressly provided therein.]"*

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Professional Ethics and Academic Freedom Committee
Jan. 29, 1999

Adopted, February 5, 1999

FOOTNOTE:

*Matter in brackets was deleted in a second round of amendments by PEAF Committee.

‡Matter in caps were additional insertions in a second round of amendments by PEAF Committee.

A RESOLUTION ENCOURAGING THE FACULTY TO SUPPORT AND PARTICIPATE IN CHARITY EVENTS (98/8)

WHEREAS, The George Washington University is committed to active participation in improving the quality of life in metropolitan Washington, DC; and

WHEREAS, the University actively solicits information about faculty involvement in community service; and

WHEREAS, the University actively encourages faculty-student interaction outside the classroom; and

WHEREAS, the GW student body and administrative personnel have in recent years demonstrated remarkable enthusiasm in organizing campus-wide support for various charitable fund-raisers, notably the Whitman-Walker Washington DC AIDS Walk, which a unified GW team has entered; and

WHEREAS, in 1998 the GW team in the AIDS Walk was the largest team entered (over 800 participants), and raised the 7th-largest amount of donations, which made GW's the only university team in the top 20 of fund-raising teams; and

WHEREAS, <u>greater</u> faculty participation in the GW team would be welcome ~~(but has been scarce in recent years)~~; NOW, THEREFORE

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY

> **That the Faculty Senate <u>congratulate the faculty members on their past efforts and</u> encourage <u>them</u> to support and participate in charity events, especially when organized University-wide teams take part in those events.**

Joint Committee of Faculty and Students
February 12, 1999

Adopted, as amended, March 12, 1999